

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-1482-AIR-E TCEQ ID: RN102037959 CASE NO.: 34606
RESPONDENT NAME: Texas Barge & Boat, Inc.

Page 1 of 2

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input checked="" type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Texas Barge & Boat Freeport Facility, 4115 East Floodgate Road, Freeport, Brazoria County</p> <p>TYPE OF OPERATION: Barge cleaning, repairing, painting and abrasive blasting plant</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on March 10, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Trina Grieco, Enforcement Division, Enforcement Team 5, MC R-13, (210) 403-4006; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Mickey W. Tiner, President/CEO, Texas Barge & Boat, Inc., Post Office Box 2107, Freeport, Texas 77542-2107 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Record Review Relating to this Case: August 31, 2007</p> <p>Date of NOE Relating to this Case: August 31, 2007 (NOE)</p> <p>Background Facts: This was a routine record review.</p> <p>AIR</p> <p>Failure to report a deviation within 30 days after the end of the deviation reporting period. Specifically, the semi-annual deviation report for the December 29, 2005 to June 28, 2006 deviation reporting period was due to be submitted by July 28, 2006, but was not submitted until August 27, 2007 [30 TEX. ADMIN. CODE §§ 122.143(4) and 122.145(2)(C), Federal Operating Permit No. O-01698 General Terms and Conditions, and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p>	<p>Total Assessed: \$3,600</p> <p>Total Deferred: \$720 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$2,880</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>1) The Executive Director recognizes that the Respondent submitted a deviation report for the December 29, 2005 to June 28, 2006 deviation reporting period on August 27, 2007.</p> <p>Ordering Provisions:</p> <p>2) The Order will require the Respondent to:</p> <p>a) Within 30 days after the effective date of this Agreed Order, implement measures designed to ensure deviation reports are submitted within the required timeframes; and</p> <p>b) Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public.</p>

Additional ID No(s): BL0423N



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 26, 2007

TCEQ

DATES	Assigned	4-Sep-2007	Screening	10-Sep-2007	EPA Due	
	PCW	7-Sep-2007				

RESPONDENT/FACILITY INFORMATION

Respondent	Texas Barge & Boat, Inc.		
Reg. Ent. Ref. No.	RN102037959		
Facility/Site Region	12-Houston	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	34606	No. of Violations	1
Docket No.	2007-1482-AIR-E	Order Type	1660
Media Program(s)	Air	Enf. Coordinator	Trina Grieco
Multi-Media		EC's Team	EnforcementTeam 5
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$2,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History **44% Enhancement** **Subtotals 2, 3, & 7** **\$1,100**

Notes Penalty enhancement due to two NOVs issued for non-similar violations and two agreed orders containing a denial of liability.

Culpability **No** **0% Enhancement** **Subtotal 4** **\$0**

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply **0% Reduction** **Subtotal 5** **\$0**

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes The Respondent does not meet the good faith criteria.

Total EB Amounts **\$44** **0% Enhancement*** **Subtotal 6** **\$0**
Approx. Cost of Compliance **\$500** ***Capped at the Total EB \$ Amount**

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$3,600**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount **\$3,600**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$3,600**

DEFERRAL **20% Reduction** **Adjustment** **-\$720**

Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY **\$2,880**

Screening Date 10-Sep-2007

Docket No. 2007-1482-AIR-E

PCW

Respondent Texas Barge & Boat, Inc.

Policy Revision 2 (September 2002)

Case ID No. 34606

PCW Revision June 26, 2007

Reg. Ent. Reference No. RN102037959

Media [Statute] Air

Enf. Coordinator Trina Grieco

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	2	40%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 44%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

Penalty enhancement due to two NOVs issued for non-similar violations and two agreed orders containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 44%

Screening Date 10-Sep-2007	Docket No. 2007-1482-AIR-E	PCW
Respondent Texas Barge & Boat, Inc.	<small>Policy Revision 2 (September 2002)</small>	
Case ID No. 34606	<small>PCW Revision June 26, 2007</small>	
Reg. Ent. Reference No. RN102037959		
Media [Statute] Air		
Enf. Coordinator Trina Grieco		
Violation Number <input type="text" value="1"/>		
Rule Cite(s)	30 Tex. Admin. Code §§ 122.143(4) and 122.145(2)(C), Federal Operating Permit No. O-01698 General Terms and Conditions and Tex. Health & Safety Code § 382.085(b)	
Violation Description	Failed to report a deviation within 30 days after the end of the deviation reporting period. Specifically, the semi-annual deviation report for the December 29, 2005 to June 28, 2006 deviation reporting period was due to be submitted by July 28, 2006, but was not submitted until August 27, 2007.	
Base Penalty		<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

		Harm			
		Major	Moderate	Minor	
OR	Release				
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

		Major	Moderate	Minor	
	Falsification				
		<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="25%"/>

Matrix Notes

100% of the rule requirement was not met.

Adjustment

Violation Events

Number of Violation Events <input type="text" value="1"/>	<input type="text" value="395"/>	Number of violation days
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		daily		
		monthly		
<small>mark only one with an x</small>		quarterly		
		semiannual		
		annual		
		single event	<input type="text" value="x"/>	

One single event is recommended.

Violation Base Penalty

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$44"/>	Violation Final Penalty Total <input type="text" value="\$3,600"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$3,600"/>	

Economic Benefit Worksheet

Respondent Texas Barge & Boat, Inc.
Case ID No. 34606
Reg. Ent. Reference No. RN102037959
Media Air
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$500	28-Jul-2006	1-May-2008	1.8	\$44	n/a	\$44

Notes for DELAYED costs

Estimated cost to implement measures designed to ensure deviation reports are submitted within the required timeframes. Date required is the date the deviation report was due. Final date is the date corrective actions are projected to be completed.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$44

Compliance History

Customer/Respondent/Owner-Operator: CN600129183 Texas Barge & Boat, Inc. Classification: Average Rating: 2.72

Regulated Entity: RN102037959 TEXAS BARGE & BOAT FREEPORT FACILITY Classification: Average Site Rating: 2.72

ID Number(s):

AIR OPERATING PERMITS	ACCOUNT NUMBER	BL0423N
AIR OPERATING PERMITS	PERMIT	1698
PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	64696
AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	BL0423N
AIR NEW SOURCE PERMITS	PERMIT	21711
AIR NEW SOURCE PERMITS	PERMIT	22106
AIR NEW SOURCE PERMITS	AFS NUM	4803900126
AIR NEW SOURCE PERMITS	REGISTRATION	81954
STORMWATER	PERMIT	TXR05P327
WASTEWATER	PERMIT	WQ0004696000
WASTEWATER	EPA ID	TX0126322
WASTEWATER	PERMIT	TX0126322
INDUSTRIAL AND HAZARDOUS WASTE GENERATION	SOLID WASTE REGISTRATION # (SWR)	81437

Location: 4115 E FLOODGATE ROAD, FREEPORT, TX, 77541 Rating Date: September 01 07 Repeat Violator: NO

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: September 06, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: September 06, 2002 to September 06, 2007

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Trina Grieco Phone: (210) 403-4006

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

Effective Date: 11/6/2005 ADMINORDER 2004-1477-AIR-E
Classification: Moderate

Citation: 30 TAC Chapter 122, SubChapter B 122.146(2)
5C THC Chapter 382, SubChapter A 382.085(b)

Description: Failure to submit the Annual Compliance Certification, required by Title V Permit No. O-01698, within 60 days of the end of the certification period.

Effective Date: 03/05/2007 ADMINORDER 2006-0874-AIR-E
Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.110(a)(4)
30 TAC Chapter 122, SubChapter B 122.143(4)

5C THC Chapter 382, SubChapter A 382.0518(a)
5C THC Chapter 382, SubChapter D 382.085(b)

Rqmt Prov: No. O-01698, SC 13A OP
Description: Failed to obtain permit authorization prior to venting barges containing a sodium hydroxide (caustic) heel to a flare while depressurizing, cleaning and stripping the barges.

Classification: Minor

Citation: 30 TAC Chapter 122, SubChapter B 122.143(4)
30 TAC Chapter 122, SubChapter B 122.145(2)(B)

Rqmt Prov: No. O-01698, General Terms and Condition OP

Description: Failed to report deviations of FOP No. O-01698 within 30 days of the end of the certification period.

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	09/23/2002	(11994)
2	02/04/2003	(22898)
3	04/14/2003	(29688)
4	06/26/2003	(118903)
5	02/27/2004	(261929)
6	08/30/2004	(251111)
7	09/24/2004	(368290)
8	09/28/2004	(335365)
9	10/18/2004	(368291)
10	11/29/2004	(390888)
11	12/27/2004	(390889)
12	01/25/2005	(390890)
13	02/22/2005	(428323)
14	03/08/2005	(372865)
15	03/21/2005	(390887)
16	04/15/2005	(428324)
17	05/18/2005	(428325)
18	06/01/2005	(428326)
19	07/21/2005	(448275)
20	08/08/2005	(401606)
21	08/23/2005	(448276)
22	09/20/2005	(448277)
23	10/26/2005	(493954)
24	11/28/2005	(493955)
25	12/13/2005	(493956)
26	01/10/2006	(493957)
27	06/12/2006	(457670)
28	11/21/2006	(552216)
29	11/21/2006	(552218)
30	11/21/2006	(552219)
31	11/21/2006	(552220)
32	12/27/2006	(552214)
33	12/27/2006	(552215)
34	12/27/2006	(552217)
35	01/22/2007	(589811)
36	01/22/2007	(589814)
37	01/22/2007	(589816)
38	01/22/2007	(589819)
39	01/22/2007	(589820)
40	02/21/2007	(589812)
41	03/22/2007	(589813)
42	04/23/2007	(589815)
43	05/23/2007	(589817)
44	06/21/2007	(589818)
45	07/20/2007	(565703)
46	08/31/2007	(574422)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 06/26/2003 (118903)

Self Report? NO

Classification: Major

Rqmt Prov: PERMIT MSGP Part III, Section A (5)(h)

Description: Failure to conduct quarterly visual sampling for 2001 and 2002.

Self Report? NO

Classification: Moderate

Rqmt Prov: PERMIT MSGP Part III Section A (5)(g)

Description: Failure to conduct monthly periodic inspections in 2001, 2002, and from January to May of 2003.

Self Report? NO

Classification: Moderate

Rqmt Prov: PERMIT MSGP Part V, Section Q (5)

Description:	Failure to conduct benchmark monitoring for the year 2003.		
Self Report?	NO	Classification:	Moderate
Rqmt Prov:	PERMIT MSGP Part III, Section D (1)(b)		
Description:	Failure to conduct annual effluent limitation (heavy metals) monitoring.		
Self Report?	NO	Classification	Moderate
Rqmt Prov:	PERMIT MSGP Part III, Section A (7)(b)		
Description:	Failure to conduct the annual comprehensive site compliance evaluation.		
Self Report?	NO	Classification	Moderate
Citation:	TWC Chapter 26 26.039		
Description:	Failure to contain an unauthorized discharge of wash water.		
Date:	02/23/2004	(261929)	
Self Report?	NO	Classification	Moderate
Rqmt Prov:	PERMIT MSGP Part V, Section Q (5)		
Description:	Failure to conduct benchmark monitoring for the year 2003.		

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
TEXAS BARGE & BOAT, INC.
RN102037959**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-1482-AIR-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Texas Barge & Boat, Inc. ("Texas Barge & Boat") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and Texas Barge & Boat appear before the Commission and together stipulate that:

1. Texas Barge & Boat owns and operates a barge cleaning, repairing, painting and abrasive blasting plant at 4115 East Floodgate Road in Freeport, Brazoria County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. The Commission and Texas Barge & Boat agree that the Commission has jurisdiction to enter this Agreed Order, and that Texas Barge & Boat is subject to the Commission's jurisdiction.
4. Texas Barge & Boat received notice of the violations alleged in Section II ("Allegations") on or about September 5, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Texas Barge & Boat of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Three Thousand Six Hundred Dollars (\$3,600) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Texas Barge & Boat has paid Two Thousand Eight Hundred Eighty Dollars (\$2,880) of the

administrative penalty and Seven Hundred Twenty Dollars (\$720) is deferred contingent upon Texas Barge & Boat's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Texas Barge & Boat fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Texas Barge & Boat to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Texas Barge & Boat have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that Texas Barge & Boat submitted a deviation report for the December 29, 2005 to June 28, 2006 deviation reporting period on August 27, 2007.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Texas Barge & Boat has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Plant, Texas Barge & Boat is alleged to have failed to report a deviation within 30 days after the end of the deviation reporting period, in violation of 30 TEX. ADMIN. CODE §§ 122.143(4) and 122.145(2)(C), Federal Operating Permit No. O-01698 General Terms and Conditions and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during a record review conducted on August 31, 2007. Specifically, the semi-annual deviation report for the December 29, 2005 to June 28, 2006 deviation reporting period was due to be submitted by July 28, 2006, but was not submitted until August 27, 2007.

III. DENIALS

Texas Barge & Boat generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Texas Barge & Boat pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Texas Barge & Boat's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Texas Barge & Boat, Inc., Docket No. 2007-1482-AIR-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that Texas Barge & Boat shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, implement measures designed to ensure deviation reports are submitted within the required timeframes; and
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Air Section, Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

3. The provisions of this Agreed Order shall apply to and be binding upon Texas Barge & Boat. Texas Barge & Boat is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
4. If Texas Barge & Boat fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Texas Barge & Boat's failure to comply is not a violation of this Agreed Order. Texas Barge & Boat shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Texas Barge & Boat shall notify the Executive Director within seven days after Texas Barge & Boat becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Texas Barge & Boat shall be made in writing to the Executive Director. Extensions are not effective until Texas Barge & Boat receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Texas Barge & Boat in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Texas Barge & Boat, or three days after the date on which the Commission mails notice of the Order to Texas Barge & Boat, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Texas Barge & Boat, Inc.
DOCKET NO. 2007-1482-AIR-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

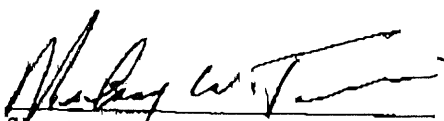
3/10/08
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

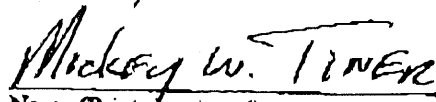
I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

1/3/08
Date


Name (Printed or typed)
Authorized Representative of
Texas Barge & Boat, Inc.

President/CEO
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Section at the address in Section IV, Paragraph 1 of this Agreed Order.

